



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 23, 2022

Kelly Lawler  
The KAL Group  
9460 Tegner Road  
Hilmar, CA 95324

Re: Your Request for Advice  
**Our File No. A-22-020**

Dear Ms. Lawler:

This letter responds to your request for advice as treasurer for the Brian Dahle for Governor 2022 committee regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTIONS

1. To the extent it is permissible, what are the reporting obligations for the Brian Dahle for Governor 2022 committee (“Committee”), if it provides a vendor with its candidate’s logo to produce and sell merchandise and the Committee receives a 15 percent commission on all sales? Are the reporting obligations changed if the Committee receives no payment from the vendor?

2. To the extent it is permissible, what are the reporting obligations if the Committee promotes the vendor on the Committee’s official website and social media and charges the vendor a fee for the advertising space? Are the reporting obligations changed if the Committee does not charge the vendor a fee? Are the reporting obligations changed if the Committee is receiving a commission for the merchandise sales?

### CONCLUSIONS

1. There is nothing in the Act that prohibits the Committee from providing a vendor with its candidate’s logo for use on merchandise or from receiving a commission on the sales of merchandise. However, due to the coordination between the Committee and the vendor to create and sell the merchandise at no cost to the Committee, the vendor is making a contribution to the Committee. If no

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

commission is received by the Committee, the contribution would be reported as an in-kind contribution for the fair market amount it would cost the Committee to purchase the merchandise itself. Should the Committee receive a commission on sales, the commission received must be reported as a monetary contribution to the Committee and the difference between the fair market amount it would have cost to purchase the merchandise by the Committee and any commission payments received must be reported as an in-kind contribution. Additionally, considering the coordination and the agreement for the vendor to sell campaign merchandise at no cost to the Committee, the vendor is an agent or independent contractor of the Committee, and the Committee must report expenditures of \$500 or more made by the vendor under Section 84303.

2. There is nothing in the Act that prohibits the Committee from promoting the vendor on the Committee's official website and social media and charging a fee. However, the vendor's payment for the space is a contribution to the Committee except to the extent the Committee can establish the advertisement space has a fair market value based upon a comparison to other website advertisements of a comparable nature and similar size audience. This conclusion does not change if the Committee receives a commission on sales. The facts state that the payment of a commission will not be related to whether or not the Committee charges the vendor an advertising space and promotion fee.

### **FACTS AS PRESENTED BY REQUESTER**

You are the treasurer for the Committee and you have been approached by a vendor in the business of printing and producing merchandise commercially who is requesting to use the Committee's campaign logo to sell merchandise (i.e., hats, t-shirts, etc.). The campaign logo reads "Brian Dahle" with a "BD" insignia next to the candidate's name, with "Governor" below the candidate's name. Some of the items to be sold by the vendor will include the full logo and some will only have the "BD" insignia or design. The Committee has options when agreeing to provide the vendor with the logo: (1) receive no compensation for the use of the logo or sale of items; or (2) receive a commission on all items sold. If the Committee were to take a commission, the proposed commission structure will be a negotiable rate, such as 15 percent of sales.

The Committee is also considering offering the vendor advertising space on the Committee's official campaign website and social media to promote these items. In your email correspondence on April 7, 2022, you confirmed that if the Committee decides to charge the vendor a fee for the advertising space, it will be a separate fee. The space will not be provided in exchange for a sales commission. You further stated you are unaware if the vendor provides the same or similar services to any other candidates. You would like to know the permissibility of the proposed transaction and the Committee's reporting obligations.

### **ANALYSIS**

The Act defines a "contribution" as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes and includes any goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public. (Section 82015; Regulation 18215.) Likewise, Regulation 18215(a) provides that "[a] contribution is any payment made for political purposes for

which full and adequate consideration is not made to the donor.” “Full and adequate consideration” means fair market value. (Section 82025.5.) “Fair market value” means the estimated fair market value of goods, services, facilities, or anything of value other than money or, in other words, the amount that would have had to be paid to acquire similar goods or services on the open market. (Section 82025.5.)

A payment is presumed to be made for political purposes if received by a candidate or controlled committee. (Regulation 18215.) A payment is also made for political purposes if it is received by or made at the behest of a candidate, unless it is clear from surrounding circumstances that the payment was received or made at his or her behest for personal purposes unrelated to his or her candidacy. (Regulation 18215.) “Made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. (Section 82041.3; Regulation 18225.7.)

### *Campaign Logo & Commission on Sales of Merchandise*

There is nothing in the Act that prohibits the Committee from providing the vendor with its candidate’s logo and receiving a commission on the sales of the resulting merchandise. However, the actions raise the reporting requirements under the Act, discussed below.

#### 1. Sales Commission Payments from the Vendor are Reportable Contributions.

Your Committee is considering a cooperative effort with the vendor, in which the Committee provides the candidate’s logo to the vendor, the vendor sells merchandise, the candidate gains publicity for his candidacy through the merchandise sales, and the vendor may or may not provide the Committee a commission on sales. The Committee is additionally considering coordinating with the vendor in promoting the merchandise. Based on the facts provided, there is a coordinated effort between the Committee and the vendor to create and distribute campaign merchandise to the benefit of the Committee and the promotion of Mr. Dahle’s candidacy at no cost to the Committee. Therefore, the vendor is creating and selling the merchandise “at the behest of” the candidate and this activity is a contribution to the Committee.

If the Committee receives no commission, the vendor’s services would be an in-kind contribution reported as the fair market value of what it would have cost the Committee to purchase the merchandise itself. Should the Committee receive a commission on sales from the vendor, the commission received must be reported as a monetary contribution to the Committee and the difference between the amount it would have cost to purchase the merchandise by the Committee and any commission payments received must be reported as an in-kind contribution.<sup>2</sup>

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<sup>2</sup> Note that in these situations, the *purchaser of the merchandise* is typically not making a contribution, as the purchaser is receiving full and adequate consideration for the payment. (*Edelstein* Advice Letter No. A-87-316.) However, if the merchandise is sold for more than fair market value, payments from the purchaser may also be a contribution to the Committee to the extent that the payments are subsequently and indirectly received by the Committee from the vendor. To the extent the vendor charges more than fair market value and subsequently makes payments to the Committee, you should seek further advice.

## 2. Reporting the Vendor's Expenditures.

The Act requires candidates and committees to report certain expenditures made by an agent or independent contractor on behalf of or for the benefit of the candidate or committee. (Section 84303.) Section 84303 states:

Expenditure by Agent or Independent Contractor. (a) An expenditure of five hundred dollars (\$500) or more shall not be made, other than for overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of a candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee.

Regulation 18431 provides that expenditures made by an agent or independent contractor, including any vendor or subvendor, on behalf of or for the benefit of a candidate or committee must be reported under Section 84303 and this includes expenditures to any person, other than an employee of the agent or independent contractor, who furnishes the candidate or committee with products or services that show how the campaign is conducted, including but not limited to expenditures for campaign paraphernalia. (Regulation 18431(a)(2)(C).)

The merchandise will serve a political purpose in promoting Mr. Dahle's candidacy. Therefore, in light of the coordinated effort to sell the merchandise for the benefit of the Committee and Mr. Dahle's candidacy, the Committee has an agreement for the vendor to sell campaign merchandise and the vendor is an agent or independent contractor of the Committee. As a result, the Committee must report expenditures of \$500 or more made by the vendor as specified by Section 84303 and Regulation 18431, including when they purchase the merchandise, as they are campaign paraphernalia under Regulation 18431(a)(2)(C).

### *Advertising Space*

The Committee is considering promoting the vendor's campaign merchandise on its official campaign website and social media and charging a fee. As stated above, payments by the vendor to the Committee are presumed contributions except to the extent that full and adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes. (Section 82015.)

We have advised that where a committee sells advertising space in its newspaper, to the extent the advertiser pays fair market value for the advertising space, the payment is not a contribution to the committee and may be reported as a miscellaneous increase to cash on the committee's campaign statements. (*Parisi* Advice Letter, No. A-98-269.) "Fair market value" as discussed above, is the amount the advertiser would pay to purchase similar advertising space on the open market. (Section 82025.5.) However, as payments are presumed contributions, it is the Committee's burden to demonstrate a fair market value for the advertisement space. Considering the marginal costs to the committee of promoting the merchandise on the Committee's campaign website, we can only advise that the payments for the advertisements are contributions, and should be reported accordingly, unless the Committee can establish the advertisement space has a fair market value based upon a comparison to other website advertisements of a comparable nature and similar size audience. In other words, only to the extent the

Committee can establish that the advertisement space has a fair market value and the payments for the advertisement space are for the fair market amount would the payments not be considered contributions to the Committee. This conclusion does not change if the Committee receives a commission on the merchandise sales, because the facts state that the payment of a commission will not be related to whether or not the Committee charges the vendor an advertising space and promotion fee.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

*Katelyn L. Greene*

By: Katelyn L. Greene  
Counsel, Legal Division

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